

**ARIZONA JUDICIAL COUNCIL'S  
LIMITED JURISDICTION COURTS COMMITTEE**

**Arizona State Courts Building  
Conference Room 119A & B  
Phoenix, AZ 85007**

**September 12, 2001**

**Members Attending:**

Honorable R. Michael Traynor, Chair	Ms. Pamela Jones
Honorable George Anagnost	Honorable John Lamb
Ms. Faye Coakley	Honorable Michael Lester
Honorable Sherry Geisler	Honorable Ronald O. McDaniel
Honorable John Kennedy	Honorable Antonio Riojas, Jr.
Mr. Don Jacobson	Honorable Mary Scott
Mr. Theodore Jarvi	Mr. Paul Thomas

**Absent Members:**

Ms. Kathy Barrett (excused)	Honorable G. Michael Osterfeld (excused)
Honorable Judy Ferguson (excused)	Mr. Dale Poage (excused)
Hon. Manuel Figueroa	Mr. Ben Rowe, Jr.

**Guests:**

Honorable Elizabeth Finn

**Staff:**

Mr. David Berg	Ms. Debra A. Hall
Ms. Beverley Boyd	Mr. Karl Heckart
Ms. Paula Davey	Ms. Stephanie Jaurequi-Hidalgo
Mr. George Diaz, Jr.	Ms. Lori Johnson
Ms. Catherine Drezak	Mr. Raj Kollengode
Ms. Debby Finkel	Mr. Tim Lawler
Ms. Theresa Gonzales	Ms. Pam Peet
Ms. Ann Grossnickle	Mr. David Sands
	Ms. Janet Scheiderer

**REGULAR BUSINESS**

**1. Call to Order**

Judge R. Michael Traynor called the meeting to order at 11:10 a.m. Judge Traynor presented Judge Michael Lester with a plaque of appreciation for his six years of service as chairman of LJC.

Judge Traynor welcomed new and returning LJC members. He thanked Ms. Dawn Kotarski for her service to LJC and wished her well in her new position at

the AOC.

Judge Traynor mentioned that copies of Rule 10.2 were included in the LJC materials for information only.

Judge Traynor announced the tentative LJC meeting dates for 2002; February 20, May 22, September 24 (Legislative Subcommittee), September 25 and December 4.

**MOTION:** Motion made and seconded to **adopt the tentative LJC meeting dates for 2002 as the actual meeting dates. The motion was passed unanimously. LJC-01-16.**

## **2. Approval of Minutes from the May 16, 2001 Meeting**

Judge Traynor asked if there were any changes or corrections to the May meeting minutes. None were made.

**MOTION:** Motion was made and seconded **to approve the minutes from the May 16, 2001 meeting as presented. The motion was passed unanimously. LJC-01-17.**

## **INFORMATION/POTENTIAL ACTION ITEMS**

### **3. Rule 7.2**

Judge Michael Lester presented background explaining why Rule 7.2 needs to be amended. The statute now provides authority for a judge to set bond, however, there are no limits on the bond.

Four versions have been drafted. All versions start the same as the current rule. The differences are:

Version 1 uses “unless the court finds.”

Version 2 uses “clear and convincing evidence.”

Version 3 gives unlimited discretion to the court, but allows either party to request a review of the conditions of release.

Version 4 refers silently to ARS § 22-372A which is the bond on appeal and execution of sentence.

Discussion: Currently, judges do not have the right to change the bond. All drafts allow judges to take the defendant into custody at the hearing. Mr. Ted Jarvi stated that limited jurisdiction appeals take about 3-4 months. If someone files notice of appeal and cannot pay the bond, being taken into custody may mean more time in jail than the jail sentence would be. Judge

Lester noted that each version allows for release from custody if the defendant has been in custody for the length of the jail sentence and that is not a change.

Mr. Jarvi stated that he likes the provision for the court to make findings to protect defendants. He would like the findings in writing and explicit explanation why the defendant poses a danger and that other pre-condition release would work. He recommended the proposed Rule be reviewed by the Committee on Superior Courts.

Judge Anagnost stated that Version 2 trumps Rule 26.3A2. Every defendant has the right to counsel if there is a risk of jail time. Should everyone have counsel automatically? Where does the committee want to stand regarding right to counsel? There is also an issue of self-incrimination.

The question was raised concerning when the defendant becomes aware he/she may go into custody. Mr. Jarvi stated that in superior court, the defendant becomes aware of the possibility when the decision to go to trial is made. He further stated that the rule contemplates a defendant being sent to jail when there is a conviction without sentencing.

Judge Geisler mentioned that many times judges do not see the defendant early in the process due to initial appearances by judges pro tempore or commissioners. Judge Lamb stated that he appoints public defenders when there is a possible risk of jail time. Judge Anagnost asked how can judge let a defendant waive counsel when every case has the potential of jail time.

Judge Traynor noted that there has been a move to make some domestic violence offenses non-bondable offenses. Judge Lester stated that the proposed rule change should only effect a very small percent of cases. The move to make some domestic violence offenses non-bondable was presented by domestic violence victim advocates.

**MOTION:** Motion made and seconded to **table this topic to the next meeting. Motion passed. LJC-01-18**

#### **4. Arizona Judicial Code of Administration-Reduction of Outstanding Fines**

Ms. Paula Davey stated that the proposed code eliminated redundant language. Judge Lester suggested removing the reference to ARS § 28-1381 from the code.

**MOTION:** Motion made and seconded to **approve the code with the removal of the ARS § 28-1381 reference. Motion passed. LJC-01-19**

#### **LUNCH BREAK**

#### **5. Legislative Subcommittee**

Judge Lester referenced the minutes from the 9/11/01 Legislative Subcommittee meeting (attached) as an aid to the legislative proposals. He encouraged LJC members to participate in the weekly Friday legislative conference calls. He called upon Mr. David Sands, Mr. George Diaz, Jr. and Ms. Theresa Gonzales.

## **Proposals**

**02-02 Court Filing Fees** integrates and clarifies certain filing fees and other changes required by statute to be collected by the superior court and limited jurisdiction courts. Changes are:

- 1) *increase the justice of the peace case filing fees to support addition staff, training and case processing needs arising from increased jurisdictional limits;*
- 2) *add a \$50 fee for injunctions against workplace harassment filings;*
- 3) *increase by the minimum clerk fees from \$17 to \$18 in justice and municipal courts;*
- 4) *add federal and tribal agencies to the list of governmental entities exempt from payment of court fees ARS § 12-304.*

*Ms. Finkel reviewed the outcome from the legislative subcommittee's meeting.*

*Discussion: Concern was expressed about the proposed faxing fee being so high, and having a postage and handling fee. Concern was also voiced about tying increases to need for more staff which could cause more problems with funding authorities.*

*Mr Jarvi and Judge Lester stated that an \$18 faxing fee is too high.*

**MOTION:** *Motion made and seconded that the per page faxing fee be set at \$0.50 for local faxing and \$1.00 for long-distance. Motion passed.  
LJC-01-20 (14-0-0)*

**MOTION:** *Motion made and seconded to approve this proposal with the amendments recommended by the Legislative Subcommittee and the new per page faxing fee recommendation. Motion passed.  
LJC-01-21 (14-0-0)*

**02-05 Employer Compensation of Jurors** requires employers to pay regular wages to people who appear for jury duty or are selected for trial.

Ms. Gonzales reviewed the outcome of the Legislative Subcommittee meeting.

**MOTION:** Motion made and seconded to not include this proposal in the AJC legislative package and to refer it to the subcommittee on jury selection and membership for further study. Motion passed LJC-01-22 (13-0-0)

*02-06 Regional Jury Summoning* enables jurors to be summoned to the most proximate courthouse to their residence by creating judicial districts in counties where the superior court has more than one location.

**MOTION:** Motion made and seconded to not include this proposal in the AJC legislative package and to refer it to the subcommittee on jury selection and membership for further study. Motion passed. LJC-01-23 (11-3-0)

*02-09 Terms of Pro Tempore Judges* amends the statute by extending the term of pro tempore judge from six months to twelve.

**MOTION:** Moved and seconded to include this proposal with the amendment to include justices of the peace pro tempore in the proposal. Motion passed. LJC-01-24 (13-1-0)

*02-15 Domestic Violence* makes technical and substantive changes in laws regarding domestic violence, primarily intended to:

1. make consistent presently conflicting provisions of law regarding the effective date of modifications to protection orders;
2. include injunctions against harassment in the statute that elevates an assault to aggravated assault if committed while the perpetrator is subject to a protection order;
3. add the objective standard “reasonably should have known” to statutes that increase terms of sentencing when a felony domestic violence offense is committed against a pregnant victim;
4. make consistent the sentencing provisions of ARS §§ 13-3602(L) and 13-711 regarding domestic violence offenses committed against pregnant victims; and
5. includes spousal rape within the definition of domestic violence.

**MOTION:** Motion made and seconded to approve the 1<sup>st</sup> section which makes presently conflicting provision of law consistent. Motion passed. LJC-01-25 (14-0-0)

**MOTION:** Motion made and seconded to refer the last four sections to back to CIDVC for redrafting and/or submit to the Committee on Superior Courts for consideration. Motion passed. LJC-01-26 (14-0-0)

**MOTION:** Motion made and seconded to include the first section in the AJC legislative package and refer the last four sections back to CIDVC. Motion passed. LJC-01-27 (13-1-0)

**02-16 Sealing/Redaction of Records** amends ARS §§ 28-454, 11-483 and 11-484 to seal and redact the public records of judicial officers.

Discussion: Several stakeholders are not included in the redaction component of this proposal. The concern was expressed that it is getting easier to close access to public records.

**MOTION:** Moved and seconded to include this proposal with the following amendments:

Include justices of the peace.

Delete the justification of a “reason” and have the redaction by virtue of the position.

Redaction should last term plus five years.

Motion passed. LJC-01-28 (11-3-0)

**02-18 Records Retention** eliminates the statutory requirement that the Arizona State Library, Archives and Public Records review limited jurisdiction court records which are ready for destruction. A blanket waiver indicating absence of any historical significance in the record would be sent to the agency on behalf of all limited jurisdiction courts.

**MOTION:** Motion made and seconded to include this proposal in the AJC

*legislative package. Motion passed LJC-01-29 (14-0-0)*

**Prioritization:**

1. O2-02 close count to #2
2. O2-15 close count to #1
3. O2-18 close count to #4
4. O2-09 close count to #3
5. O2-16

*Judge Lester expressed concern that O2-09, O2-16 and O2-18 may not be acted upon if they are not included in LJC's recommendation to AJC.*

**MOTION:** *Motion made and seconded to approve the prioritization.  
Motion passed LJC-01-30*

6. *Domestic Violence Requirements for AZTEC System*

*Mr. Karl Heckart presented background information regarding the central repository and required fields. This federally funding project's main purpose is public safety. The first phase is to bring ACAP courts online and into the central repository. The second phase is to integrate the system with DPS and non-ACAP court. The AOC is seeking funds for this phase. The third phase is to make the NCIC connection happen and automate the service component. The intent is to have minimal impact on the courts with data entry requirements. The AOC is attempting to get complete business process automated and have a quality control.*

*Ms. Stephanie Jaurequi-Hidalgo demonstrated the entry screens for entering orders of protection petitions and the orders themselves. Questions were asked concerning why it was necessary to have the type of relationships entered into the system. It was stated that the relationship is desired for statistical profiling of what the population looks like. The relationship information is not necessary for law enforcement purposes.*

*Public access to this program has not been determined. Questions regarding the need to have the Brady requirement as a mandatory field.*

Policy needs to be developed about having a description of the person served. No policy has been set for editing an incorrect name. It was noted that the order can be edited since it is a WordPerfect document. Ms. Jaurequi-Hidalgo demonstrated it and showed that it contains the previous information.

Mr. John Pombier stated that it is desired for the central repository to have a specific number of fields. He doesn't know how many fields are the bare minimum data. He stated that he does not want the courts to be overloaded. The order and what is ordered are the important information.

Judge Elizabeth Finn stated that the mandatory fields are the party information and the six required PCO fields. The policy group is to determine if 26 fields should be part of this program. The petition information was not to be included.

Judge George Anagnost stated that his court is piloting this program. It is a work in progress and cumbersome to use. He stated that before this program is rolled out to all ACAP courts that the AOC needs to make sure of the real objective of this program because it is not a trivial project. A lot of work goes into preparing the worksheets. He is concerned that the worksheets will sit in stacks waiting to be entered.

Mr. Heckart stated there are some big policy issues yet to be determined such as multiple protection orders in other courts.

Judge Lester asked if the Governor's Office would be satisfied with six PCO fields. Mr. Pombier stated more would be preferred, but they want the courts to be able to do whatever they can to keep the process moving.

Ms. Jaurequi-Hidalgo stated that all petition information have been changed to optional fields. All order information will pop into screens for modification orders. Orders can be printed at the terminal. Judge Anagnost stated that Peoria Municipal Court uses a judge's cover sheet which helps the clerks. Information that is needed is that a hearing was requested and one was set.

Flagstaff Municipal Court begins piloting the program the week of September 24th.



The program rolls out to all ACAP courts in October. Judge Lester asked why the program was rolling out so quickly when there were so many questions about screens and data requirements. He stated that LJC should have been directly involved in the development from the beginning.

Judge Traynor stated that this item will be on the agenda for an update in November.

## **7. Proposed Final Disposition Reporting Forms**

Judge Elizabeth Finn stated that the court numbers can now be added by law enforcement. The date of offense is needed and the complaint number.

**MOTION:** Motion made and seconded to approve the draft final disposition form as presented. Motion passed. LJC-01-31

Judge Finn discussed the Automated Fingerprint Information System (AFIS) procedures. Courts need to pay more attention to the type of warrant. Failure to appear (FTA) warrants are from ARS §§ 13-2506 (misdemeanor FTA for pre-trial adjudication) and 13-2507 (felony FTA). ARS §13-3904 is a violation of a promise to appear (VPA) when the defendant has signed the multi-charge citation form.

The post-adjudication cases depend on the code. There are Failure to Pay Fine (FTPF) and Failure to Comply (FTC) and Probation Violation Warrants. Discussions need to occur with law enforcement to coordinate efforts and make sure the booking sheets are accurate and have the date of offense on it. She suggested that a model warrant language committee be formed. The literal description is the statute code. It was suggested that the Limited Jurisdiction Courts Administrators Association may take this project on and present it to LJC when ready.

8. *Rules and Forms Subcommittee*

*Judge George Anagnost updated the members on the status of the Proposed Rules of Civil Traffic Procedures. Version 8.0 is almost ready for review and will be presented at the November meeting.*

**OTHER BUSINESS**

9. *Call to the Public*

*Judge Traynor called to the public.*

10. *Adjournment*

*Motion: Motion was made and seconded to adjourn the meeting.  
Motion passed. LJC 01-32.*

*Meeting was adjourned at 4:35 p.m.*

*Respectfully submitted,*

*Ms. Debby Finkel*

*Staff to the Limited Jurisdiction Courts Committee*